

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JULIAN OKEAYAINNEH,
Plaintiff,

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

MAY 16 2019

CLERK, U.S. DISTRICT COURT
By *[Signature]*
Deputy

Civil Action No. 3:18-cv-01195-BK

v.

UNITED STATES DEPARTMENT OF
JUSTICE, Executive Office for United
States Attorneys, and U.S. OFFICE OF
PERSONNEL MANAGEMENT,

Defendants.

PLAINTIFF'S STATEMENT OF MATERIAL FACTS IN DISPUTE

Plaintiff submits the following material facts in dispute. Plaintiff submitted a Statement of Material Facts Not In Dispute, based on factual events that transpired. However, the Plaintiff's Dispute of Material facts is based on the events that did not transpire or occur in his FOIA request process according to the statutory and regulatory obligation of FOIA and the Department of Justice.

1. Request No. EOUSA-2017-003409

Plaintiff submitted a FOIA Privacy Act request to EOUSA dated September 9, 2017. The request sought documents pertaining to the commission/appointment by a United States Attorney General, under 28 U.S.C. § 541, for the pertinent United States Attorney; the commission/appointment by a United States Attorney General, under 28 U.S.C. § 542, for the pertinent Assistant United States Attorney(s); and the Appointment Affidavits preserved for the pertinent individuals, pursuant to 5 U.S.C. § 2906, for the Oath of Office required by 5 U.S.C. § 3331 and 28 U.S.C. § 544. The request also sought documents pertaining to previous and current assignments/postings for **four attorneys** employed or formerly employed by the U.S. Attorney's Office for the District of Minnesota: **U.S. Attorneys B. Todd Jones and Gregory G. Brooker, Assistant U.S. Attorneys (AUSA's) Ann M. Anaya and Lola**

Velazquez-Aguilu. EOUSA assigned it tracing number **EOUSA-2017-003409.** (See **EOUSA Declaration, App.026-029).**

On October 31, 2017, EOUSA mailed the Plaintiff a letter informing him that EOUSA did not possess records pertaining to **Jones (USA) and Assistant U.S. Attorneys Anaya and Velazquez-Aguilu** and enclosing the one-page Appointment Affidavit form for **Greg G. Brooker - (AUSA)**, while redacting pursuant to 5 U.S.C. § 552(b)(6) the signatures of the appointee and the U.S. Attorney. (See **EOUSA Declaration, App. 031.)**

Plaintiff disputes the material fact that the Defendants have adequately processed his FOIA request, according to statutory and regulatory obligations of FOIA and the DOJ. The Defendants failed to properly search for all records requested in the above requested number. The Defendants failed to search for the documents/records pertaining to the commission/appointment by a United States Attorney, under 28 U.S.C. § 542 for **AUSA's Lola Velazquez-Aguilu**, who was still employed with the U.S. Attorney's Office in Minneapolis, Minnesota at the time of the FOIA request. The Appointment Affidavit form is not this document.

2. Request No. EOUSA-2018-000607

Plaintiff submitted a FOIA/Privacy Act request consisting of copies of **Request Nos. EOUSA-2017-003409 and -2018-000143** dated September 9, 2017 and September 25, 2017 respectively, to EOUSA. The requests sought documents pertaining to the commission/appointment by a United States Attorney General, under 28 U.S.C. § 541, for the pertinent United States Attorney; the commission/appointment by a United States Attorney General, under 28 U.S.C. § 542, for the pertinent Assistant United States Attorney(s); and the Appointment Affidavits preserved for the pertinent individuals, pursuant to 5 U.S.C. § 2906, for the Oath of Office required by 5 U.S.C. § 3331 and 28 U.S.C. § 544. The requests also sought documents pertaining to previous and the current assignment for **four attorneys** employed or formerly employed by the U.S. Attorneys Office for the District of Minnesota: **U.S.Attorneys B. Todd Jones and Gregory G. Brooker, ... AUSA's Ann M. Anaya and Lola Velazquez-Aguilu.** While the other request also sought the same documents mentioned above for **four attorneys** employed or formerly employed by the U.S. Attorney's Office for the Central District of California: **U.S. Attorneys Ronald L. Cheng and Kevin Scott Rosenberg, along with AUSA's David A. Kettel, Becky S. Walker, Kevin Scott Rosenberg and Ronald L. Cheng.** EOUSA assigned it tracking number **EOUSA-2018-000607.**

On December 4, 2017, EOUSA mailed Plaintiff a letter advising that no records were located for **Velazquez-Aguilu** and enclosing a two one-page Appointment Affidavit forms for AUSA's **Greg Brooker and Kevin L. Rosenberg**, redacting pursuant to 5 U.S.C. § 552(b)(6) and 5 U.S.C. § 552(b)(7)(C) the signatures of the appointee and another U.S. Attorney's Office employee. (See **EOUSA Declaration, App. 051 and App. 053.**)

Plaintiff disputes the material fact that the Defendants have adequately processed his FOIA request, according to statutory and regulatory obligations of FOIA and the DOJ. The Defendants failed to search for documents pertaining to the commission/appointment by a United States Attorney General under 28 U.S.C. § 542 for **Assistant U.S. Attorneys Gregory G. Brooker along with Kevin Scott Rosenberg**. The Appointment Affidavit forms is not this document.

3. Request No. EOUSA-2018-001927

Plaintiff submitted a third FOIA/Privacy Act request, dated December 26, 2017, to EOUSA. The request sought documents pertaining to the commission/appointment by a United States Attorney General, under 28 U.S.C. § 541, for the pertinent United States Attorney; the commission/appointment by a United States Attorney General, under 28 U.S.C. § 542, for the pertinent Assistant United States Attorney(s); and the Appointment Affidavits preserved for the pertinent individuals, pursuant to 5 U.S.C. § 2906, for the Oath of Office required by 5 U.S.C. § 3331 and 28 U.S.C. § 544. The request also sought documents pertaining to previous and the current assignments for **three attorneys** employed or formerly employed by the U.S. Attorney's Office or the District of Minnesota: **U.S. Attorney B. Todd Jones and Assistant U.S. Attorneys Erika R. Mozangue and John Docherty**. The request also sought a "copy about the conclusion and findings of my criminal I filed in January of 2012, of a possible prosecutor's misconduct against Ann M. Anaya (Ex-Ausa)" in the Plaintiff's Minnesota federal criminal case no. 11/87 (MJD)-(1), and records pertaining to why the department of Justice "suddenly terminated Ann M. Anaya's (Ex-Ausa) employment in April of 2013, -- an aspiring future federal judge." EOUSA assigned it tracking number **EOUSA-2018-001927**.

On February 8, 2018, EOUSA mailed Plaintiff a letter advising that no records were located for **Jones (USA)** and **Mozangue (AUSA)** and enclosing the One-page Appointment Affidavit form for **AUSA John Francis Docherty**, redacting pursuant to 5 U.S.C. § 552(b)(6) and 5 U.S.C. § 552(b)(7)(C) the signature of the appointee

(and without redaction of the signature of the district judge who administered the oath). (See EOUSA Declaration App. 076.)

Plaintiff disputes the material fact that the Defendants have adequately processed his FOIA request, according to statutory and regulatory obligations of FOIA and the DOJ. The Defendants failed to search for documents pertaining to the commission/appointment by a United States Attorney General under 28 U.S.C. § 542 for **Assistant U.S. Attorney John Francis Docherty [whose employment with USDOJ - U.S. Attorney's Office in Minneapolis, Minnesota was terminated on 01/09/2012 (see Plaintiff Exhibit App. 007)]**. The Appointment affidavit is not this document.

4. Request No. EOUSA-2018-005886

Plaintiff submitted a FOIA/Privacy Act request, dated September 1, 2018, to EOUSA. The request sought documents pertaining to the commission/appointment by a United States Attorney General, under 28 U.S.C. § 541, for the pertinent United States Attorney; the commission/appointment by a united States Attorney General, under 28 U.S.C. § 542, for the pertinent Assistant United States Attorney(s); and the Appointment Affidavit preserved for the pertinent individuals, pursuant to 5 U.S.C. § 2906, for the Oath of Office required by 5 U.S.C. § 3331 and 28 U.S.C. § 544. The request also sought documents pertaining to previous and the current assignments for **four attorneys** employed or formerly employed by the U.S. Attorney's Office for the District of Minnesota: **U.S. Attorney Erica Hinkle MacDonald and Assistant U.S. Attorneys Lisa D. Kirkpatrick, Gregory G. Brooker, and Lolita A. Velazquez-Aguilu.** EOUSA assigned it tracking number **EOUSA-2018-005886**.

On October 12, 2018, EOUSA mailed Plaintiff a letter advising that no records were located for **Lisa D. Kirkpatrick** and enclosing the appointment/commission letter effective **January 5, 2018** by the Attorney General **Jeff Sessions III**, of **Gregory G. Brooker as interim United States Attorney and Appointment Affidavit forms as interim U.S. Attorney** and previously released Appointment Affidavit for Brooker dated **12/5/2000**, along with Appointment Affidavit forms for **USA MacDonald and AUSA Velazquez-Aguilu**, redacting pursuant to 5 U.S.C. § 552(b)(6) and 5 U.S.C. § 552(b)(7)(C) the signatures of the appointee (and without redaction of the signatures of the district judge who administered the oaths). (See EOUSA Declaration App. 114, App. 116, App. 118 and App. 120).

Plaintiff disputes the material fact that the Defendants have adequately processed his FOIA request, according to statutory and regulatory obligations of FOIA and the DOJ. The Defendants failed to search for documents pertaining to the commission/appointment by a United States Attorney General under 28 U.S.C. § 541 for United States Attorney **MacDonald** and under 28 U.S.C. § 542 for Assistant U.S. Attorney **Velazquez-Aguilu**. The Appointment Affidavit forms is not this document.

Plaintiff filed an appeal for lack of response from EOUSA to OIP, based on EOUSA's past history of non-compliance. OIP assigned tracking number **DOJ-AP-2019-000634**.

On April 25, 2019, OIP mailed Plaintiff a letter advising that after carefully considering his appeal, and as a result of discussions between EOUSA personnel and OIP, "I [Matthew Hurd - OIP Associate Chief] am remanding your [Plaintiff] request, in part, to EOUSA for further processing of certain responsive records." (See Plaintiff's exhibit K, Apps. 246 - 252).

5. Request No. EOUSA-2018-000143

Plaintiff submitted to EOUSA a second FOIA/Privacy Act request, dated September 25, 2017. The request sought documents pertaining to the commission/appointment by a United States Attorney General, under 28 U.S.C. § 541, for the pertinent United States Attorney; the commission/appointment by a United States Attorney General, under 28 U.S.C. § 542, for the pertinent Assistant United States Attorney(s); and the Appointment Affidavits preserved for the pertinent individuals, pursuant to 5 U.S.C. § 1906, for the Oath of Office required by 5 U.S.C. § 3331 and 28 U.S.C. § 544. The request also sought documents pertaining to the previous and current assignments/postings for **four attorneys** employed or formerly employed by the U.S. Attorney's Office for the Central District of California: **U.S. Attorneys Ronald L. Cheng and Kevin Scott Rosenberg, along with Assistant U.S. Attorneys David A. Kettel, Becky S. Walker, Ronald L. Cheng, and Kevin Scott Rosenberg.** EOUSA's FOIA staff received this request on October 11, 2017 and assigned it tracking number **EOUSA-2018-000143**. (See EOUSA Declaration pg. 7, App. 007).

On October 31, 2017, EOUSA mailed the Plaintiff a letter informing him that EOUSA possessed no records responsive to his September 25, 2017 request. (See EOUSA Declaration, pg. 8, App. 008.)

The Plaintiff disputes the material fact that EOUSA properly process this request. EOUSA was under obligation to forward this request to the proper agency holding the records once it ascertained that the individuals were no longer employees; they were then obligated to forward this request to the National Archives Federal Records Center for processing, according to statutory and regulatory obligations of FOIA and the DOJ.

6. Plaintiff submitted FOIA/Privacy Act requests to NPPC, and NPPC produced responsive, non-exempt records.

Plaintiff's four requests

Plaintiff also submitted requests to NPPC pursuant to FOIA and the Privacy Act, also requesting documents pertaining to the appointments of and previous and current assignments/postings for several attorneys employed or formerly employed by the U.S. Attorney's Office for the District of Minnesota or the Central District of California and/or by the Department of Homeland Security. Specifically, Plaintiff submitted five such requests to NPPC: a letter dated November 13, 2017, addressed to the NPPC's facility in Valmeyer, Illinois (**a duplicate of this letter was sent on March 24, 2018**); a letter dated December 27, 2017, addressed to the NPPC's facility in Valmeyer, Illinois; a letter dated February 20, 2018, addressed to the NPPC's facility in Valmeyer, Illinois; and a letter dated February 20, 2018, addressed to the NPPC's facility in St. Louis, Missouri.

Substantively, the four letters set forth **four distinct** requests: 1) "[a] a copy of the document pertaining to the commission/appointment by a United States Attorney General" for U.S. Attorney(s) B. Todd Jones, Gregory G. Brooker - District of Minnesota, and Nicole Guzman - DHS, District of Arizona; 2) "[a] a copy of the document pertaining to the commission/appointment by a United States Attorney General" for Assistant U.S. Attorneys Ann M. Anaya, John Docherty, Erika R. Mozangue, Lola/Lolita Velazquez-Aguilu, Jeffrey Paulsen - District of Minnesota, and Sarah L. Hartnett and Danielle Sigmund - DHS , District of Arizona; 3) "[a] a copy of the Appointment Affidavits preserved for" U.S. Attorneys Anaya, Brooker, Docherty, Jones, Mozangue, Paulsen, Velazquez-Aguilu - District of Minnesota, and Guzman, Hartnett and Sigmund - DHS, District of Arizona; and 4) "[a] a copy of the previous and current assignment/postings(s)" for the same individuals who were listed in **item four (4)**. Together, these requests to NPPC named the same **ten (10) individuals** who were the subject of Plaintiff's **suit** and **requests** to EOUSA.

Plaintiff's November 13, 2017 or the December 27, 2017 requests were not processed according to statutory and regulatory obligations of FOIA and the DOJ. NRPC Valmeyer had twenty (20) working days to respond and it failed to do so. NRPC Valmeyer did not respond to Plaintiff's November 13, 2017 or the December 27, 2017 request's at the time they were submitted due to "an administrative oversight and negligence". NRPC Valmeyer does not have a defense for this violation of law.

7. NRPC did not request additional information from Plaintiff.

In its letters dated March 20, 2018, NRPC responded to Plaintiff's February 20, 2018 request by amongst other things, denying the requests, by way of - "**THE INFORMATION REQUESTED, OATH OF OFFICE & CERTIFICATE OF APPOINTMENT ARE NOT RELEASABLE UNDER FREEDOM OF INFORMATION ACT GUIDELINES.**" and chose not to request for additional information to allow a further search for responsive records. (See Defendant OPM/NRPC Declaration at Apps. 175 through 190

Plaintiff disputes the material fact because NRPC failed to properly respond to Plaintiff's November 13, 2017 or the December 27, 2017, and failed to make a determination that would allow the Plaintiff to appeal. In a faulty appeal process, the NRPC failed to inform the Plaintiff of his rights to due process through an appeal, pursuant to **CFR 294.110**. NRPC never offered the Plaintiff a proper reason to respond, based on its violation of law.

It is now clear to this Court that NRPC already had sufficient information to process the FOIA requests without additional information, as stated in Plaintiff's Appeal Letters dated April 9, 2018, that:

**"refusing to release copies of information requested, to wit;
[Oath of Office & Certificate of Appointments and Commission/
appointment letters] contradicts 5 U.S.C. §§ 552 and 552(a)"**
(See Plaintiff's Exhibit App. 014).

8. Plaintiff's One Appeal Letter

NRPC is not aware of One letter addressed by the Plaintiff to OIP entitled "**FREEDOM OF INFORMATION ACT APPEAL**", dated April 9, 2018, addressed to Office of Information Policy - under the Department of Justice.

Plaintiff draws attention to the fact while NRPC states that it is not aware of Plaintiff's submitting an administrative appeal to its March 20, 2018 response. However, if offers no explanation for not informing Plaintiff of his rights to due process through an appeal, pursuant to **CFR 294.110**. NRPC utterly

failed to process the Plaintiff's : 1) November 13, 2017; 2) December 27, 2017; and the 3) February 20, 2018, requests according to statutory and regulatory obligations of FOIA and the DOJ.

9. NRPC produced responsive, non-exempt records.

On April 25, 2019 NRPC sent Plaintiff a supplemental response to his February 20, 2018 requests. NRPC informed the Plaintiff that it has records for only former employees **Anaya, Mozangue, Jones and Hartnett**, and that its response was therefore limited to Plaintiff's requests for records related to those individuals. The material that NRPC released, consisted of the Appointment Affidavit forms for **Anaya** dated **04/22/2002 and 03/20/2003** [NRPC Declaration Exhibit at Apps. 204-205], **Mozangue** dated **04/04/2004 and 12/30/2002** [NRPC Declaration Exhibit at Apps. 206-207], while **Jones** and **Hartnet** are "charged out" (NRPC Declaration Exhibits at Apps. 202-203].

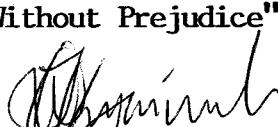
Plaintiff disputes the material fact that NRPC feels that it has satisfied the FOIA request of the Plaintiff with the produced documentation and explanations of its exempted responsive records. Plaintiff contends that the obligation to produce records for all of his requests has **not** been satisfied and accomplished. NRPC has provided Appointment Affidavit forms for the **two former employees** noted above. (**"This is the first time in which Plaintiff Okeayainneh has learned that NRPC handles records only for former employees."**)

However, NRPC has not completed its search and provided a determination about the **commission/appointment** by a United States Attorney General under 28 U.S.C. § 541 for the above mentioned U.S. Attorneys and information pertaining to the **commission/appointment** of a United States Attorney General, under 28 U.S.C. § 542 for the above mentioned Assistant U.S. Attorneys.

Respectfully submitted,

"Without Prejudice"

By:


Julian Okeayainneh, c/o:20515112 (pro se Plaintiff)
Federal Correctional Complex-2
Post Office Box 5010
Oakdale, Louisiana [71463]